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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/622,005	07/16/2003	Jeffrey T. Mannion	11578-012001	1669
26161	7590	08/05/2005	EXAMINER	
FISH & RICHARDSON PC P.O. BOX 1022 MINNEAPOLIS, MN 55440-1022			NOVOSAD, JENNIFER ELEANORE	
			ART UNIT	PAPER NUMBER
			3634	

DATE MAILED: 08/05/2005

Please find below and/or attached an Office communication concerning this application or proceeding.

Office Action Summary

Application No.

10/622,005

Applicant(s)

MANNION ET AL.

Examiner

Jennifer E. Novosad

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-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on 16 May 2005.
- 2a) ☐ This action is **FINAL**. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 1-7, 9-14, 16-27 and 29-61 is/are pending in the application.
- 4a) Of the above claim(s) 19-25, 35 and 43-61 is/are withdrawn from consideration.
- 5) ☐ Claim(s) _____ is/are allowed.
- 6) ☒ Claim(s) 1-7, 9-14, 16-18, 26, 27, 29-34 and 36-42 is/are rejected.
- 7) ☐ Claim(s) _____ is/are objected to.
- 8) ☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☒ The drawing(s) filed on 16 July 2003 is/are: a) ☒ accepted or b) ☐ objected to by the Examiner.
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some * c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
2. ☐ Certified copies of the priority documents have been received in Application No. _____.
3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).
- * See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- 1) ☐ Notice of References Cited (PTO-892)
- 2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
- 3) ☒ Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08)
Paper No(s)/Mail Date 03/24/2005.
- 4) ☐ Interview Summary (PTO-413)
Paper No(s)/Mail Date. _____.
- 5) ☐ Notice of Informal Patent Application (PTO-152)
- 6) ☐ Other: _____.

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DETAILED ACTION

This Office action is in response to the election (with traverse) and the amendment filed May 16, 2005 by which claims 1-3, 5, 6, 9-14, 16-22, 26, 27, 29-31, 33-42, and 55-61 were amended and claims 8, 15, and 28 were canceled.

Election/Restriction

Applicant's election with traverse of Group I, i.e., claim 1, and species (b), i.e., Figures 6, 6A-6D, 9 and 9A, in the reply filed on May 16, 2005 is acknowledged. The traversal is on the ground(s) that "claim 7 was not directed to a container".

Firstly, the examiner would like to point out that the restriction requirement was directed to the independent claims, e.g., 1, 3, 7, 10, etc. (see page 2 of the restriction requirement mailed January 13, 2005). *Accordingly*, applicant's argument (or statement) that "claim 7 was not directed to a container" is not well-taken.

However, in view of applicant's amendment filed with the election of Group I on May 16, 2005, the groupings of claims present in the restriction, are no longer applicable. The examiner acknowledges applicant's election of Group I and species (b), with claims 1-7, 9-14, 16-18, 26, 27, 29-34, and 36-42 readable thereon. *Thus*, these claims have been examined on the merits, as advanced above.

Accordingly, claims 19-25, 35, and 43-61 are withdrawn from further consideration pursuant to 37 CFR 1.142(b), as being drawn to a nonelected invention and species, there being no allowable generic or linking claim.

Claim Rejections - 35 USC § 112

The following is a quotation of the second paragraph of 35 U.S.C. 112:

The specification shall conclude with one or more claims particularly pointing out and distinctly claiming the subject matter which the applicant regards as his invention.

Claims 1, 3, 6, 7, 9, 10, 34, 36, and 38 are rejected under 35 U.S.C. 112, second paragraph, as being indefinite for failing to particularly point out and distinctly claim the subject matter which applicant regards as the invention.

Claim 1 recites the limitation "its formed position" in line 4. There is insufficient antecedent basis for this limitation in the claim.

Claim 3 recites the limitation " the ring" in line 2. There is insufficient antecedent basis for this limitation in the claim. *Further*, claim 3 is rendered indefinite since applicant seeks to improperly link positively recited structure, i.e., the supporting ring, to functionally recited structure, i.e., a ring of a container, through the recitation "is constructed to interfit" in line 2, and thus the metes and bounds of the claim cannot be properly ascertained.

Claim 6 recites the limitation "the support ring" in line 2. There is insufficient antecedent basis for this limitation in the claim. *To correct this*, it appears that "support" should be changed to --supporting--.

Claim 7 is rendered indefinite since it is unclear what is meant by "offset lift".

Claim 9 is rendered indefinite since the structural relationship of the "limiting" planes to the support is unclear.

The term "relatively short" in claim 10 is a relative term which renders the claim indefinite. The term "relatively short" is not defined by the claim, the specification does not

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provide a standard for ascertaining the requisite degree, and one of ordinary skill in the art would not be reasonably apprised of the scope of the invention.

Claim 10 is rendered indefinite since the structural relationship between the "greater extent" of the main body and the support is unclear.

The positive recitation "forms a seal" in claim 34 renders the claim indefinite since applicant seeks to improperly link the functional structure of the container to the positive structure of the film through this recitation. *Similarly*, note the recitation "associated with" in claim 36.

The recitation "larger in diameter than the opening of the mouth of the container" in line 2 of claim 38, renders the claim indefinite. In particular, a container is not an element of the claimed device and it is improper to seek to define claimed structure based on a comparison to some unclaimed element. In this case, the boundaries of the claim cannot be properly ascertained because one would not know whether their device infringed the instant claim until someone else later added a container. Accordingly, the features of the device, itself, must be defined instead of relying upon a comparison with an ascertained element.

Claim Rejections - 35 USC § 103

The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

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Claims 1-7, 9-14, 16-18, 26, 27, 29-34, 36-40, and 42 are rejected under 35 U.S.C. 103(a) as being unpatentable over U.S. Patent No. 5,007,231 (Ingemann '231), alone.

Ingemann '231 discloses a device for a container (10) *constructed to be united with* a predetermined container with contents whereby the container has a surrounding wall (at 11) extending from a bottom to an upper rim formation (at 13) at a top opening and the device defining a removable (the device (20) is removable from the container) suspension device, i.e., a suspender, with a ring portion (at 23) having a rim *constructed to* extend over and be joined with the upper rim formation (13) of the container (10); the device further comprising an inwardly positioned suspending element (at 50) integrally, i.e., once formed the elements are considered to be integral, extending inwardly of the ring portion (23) from a proximal region (near 52) in supporting relation with the ring portion (13) to a distal end (at 51 in Figure 8) and the suspending element located to allow the container to be suspend at a tilted orientation if the container is suspended in a rack; the suspending element further comprising an opening (in 51) through which a support *can be* inserted and being of *substantially* constant thickness along its length; the suspender being of sheet form and being free-ended and being integrated with the structure (23) so that it is deflectable from an as-formed position (see Figure 5) to a raised position (see Figure 6); a central panel (40 – see column 3, lines 23-25) made of foil, i.e., a film; *with respect to claims 37-40*, a preformed closure element insert (30) which is joined to the ring (23 - see Figure 10b, where lies parallel to 15); the proximal region of the suspending element is offset relative (see Figures 10a-10b) to an axis of the ring portion (13A) sufficiently to impart a substantial tilt thereto; the mouth of the container being wider than the bottom; the central panel (40) is attached along an underside of the suspension device (see Figure 7); the suspending

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element comprises a main body with a root region, whereby the main body has a leg portion with a width and the terminal end of the suspending element has a head with an opening and the head is wider than the leg portion .

The claims differ from Ingemann '231 in requiring: (a) the suspending element to be flexible (claims 1, 6, 7, and 17); (b) the ring portion of the suspending device to be formed as a portion of a molded unit (claim 5) or molded monolithically (claim 14); (c) the container to have specific dimensions and the suspending element to have specific dimensions (claims 10, 26, and 27); (d) a central panel to be clear (claims 34, 36 and 37); (e) the ring portion to have a frictional fit (claim 30) or a snap fit (claim 29) with the rim formation, and (f) the insert to be snap fit with a flange on the ring (claim 42).

With respect to (a) and (b), although Ingemann '231 discloses the suspending device to be of a rigid plastic material (see column 4, lines 7-27), it would have been obvious to one of ordinary skill in the art at the time the invention was made to have made the device as a flexible molded device, for ease in economy and manufacture and ease in use.

With respect to (c), although Ingemann '231 does not disclose the specific dimensions or proportions required by the claims, it would have been obvious to one of ordinary skill in the art at the time the invention was made to have provided such a container and element for ease in economy and manufacture.

With respect to (d), although Ingemann '231 does not disclose a central panel made from paper, it would have been obvious to one of ordinary skill in the art at the time the invention was made to have provided a central panel made from paper for increased protection to the contents of the package.

With respect to (e) and (f), although Ingemann '231 does not explicitly state that the fit of the ring portion (23) to the rim formation (13), which is defined as an exterior surface of the container, is friction or snap fit, it would have been obvious to one of ordinary skill in the art at the time the invention was made that the fit would be a friction and/or snap fit, for increased structural support and stability.

Claim 41 is rejected under 35 U.S.C. 103(a) as being unpatentable over Ingemann '231 as applied to claims 1-7, 9-14, 16-18, 26, 27, 29-34, 36-40, and 42 above, and further in view of U.S. Patent No. 5,511,680 (Kinne '680).

Ingemann '231 discloses the device as advanced above.

The claim differs from Ingemann '231 in requiring the use of adhesive.

Kinne '680 teaches the use of adhesive.

Thus, it would have been obvious to one of ordinary skill in the art at the time the invention was made to have utilized adhesive, in the same way as claimed, for increased securement between the elements.


Conclusion

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Jennifer E. Novosad whose telephone number is 571-272-6832. The examiner can normally be reached on Monday-Thursday, 5:30am-4:00pm.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Richard E. Chilcot can be reached on 571-272-6777. The fax phone number for the organization where this application or proceeding is assigned is 703-872-9306.

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Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).


Jennifer E. Novosad
Primary Examiner
Art Unit 3634

August 2, 2005